

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 9530	DATE	12/14/2001
CASE TITLE	USA ex rel. Richard W. Turner vs. Timothy Budz		


[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Opinion and Order. More than five and one-half years have elapsed since that April 1996 date. But Section 2244(d)(1) and (d)(2), with their much shorter timetable, have long since foreclosed any current effort on Turner's part to obtain Section 2254 relief. That being the case, "it plainly appears from the face of the petition...that the petitioner is not entitled to relief in the district court." (Section 2254 Rule 4). This Court therefore dismisses the Petition summarily (id.). Turner's motion for appointment of counsel is denied as moot. (4-1)
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	 CLERK OF COURT 01 DEC 14 PM 3:17	number of notices	Document Number <div style="font-size: 2em; font-family: cursive;">5</div>
<input type="checkbox"/>	No notices required.		DEC 17 2001 date docketed	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		Cm docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		12/14/2001 date mailed notice	
<input type="checkbox"/>	Docketing to mail notices.		SN	
<input type="checkbox"/>	Mail AO 450 form.		mailing deputy initials	
<input type="checkbox"/>	Copy to judge/magistrate judge.			
SN	courtroom deputy's initials	Date/time received in central Clerk's Office		

DOCKETED
DEC 17 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA ex rel.)	
RICHARD W. TURNER #N-27871,)	
)	
Petitioner,)	
)	
v.)	No. 01 C 9530
)	
TIMOTHY BUDZ,)	
)	
Respondent.)	

MEMORANDUM ORDER

Richard Turner ("Turner") has just tendered a Petition for Writ of Habeas Corpus--Person in State Custody ("Petition"), using the form provided by this District Court's Clerk's Office for the institution of such 28 U.S.C. §2254¹ proceedings. Because the Petition is so patently out of time, in direct violation of the statutory provision that governs the permitted timetable for such proceedings, this Court dismisses the Petition summarily pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts ("Section 2254 Rules").

Petition Part I ¶2 states that the conviction about which Turner complains took place on April 28, 1992, and Petition Part I ¶3 accurately reports that the conviction was affirmed on direct appeal on February 11, 1993 (an affirmance reported at 241 Ill.App.3d 236, 608 N.E.2d 906 (4th Dist. 1993)). Although Petition Part I ¶4 then goes on to refer to an "affirmance" of the conviction by the Illinois Supreme Court at an unknown date, the

¹ All further references to Title 28's provisions will simply take the form "Section--."

actual disposition at that level was the Supreme Court's June 3, 1993 denial of leave to appeal (reported in the table at 151 Ill.2d 575, 616 N.E.2d 345).

Petition Part II ¶1 describes Turner's post-conviction effort in the state court system as having been denied on October 3, 1993, with that denial having been affirmed on May 18, 1995. Thus the time clock for the institution of any federal habeas actions such as the present one began to tick on April 24, 1996 under the teaching of Lindh v. Murphy, 96 F.3d 856, 865-66 (7th Cir. 1996) (en banc) (rev'd on other grounds, 521 U.S. 320 (1997)) interpreting the subsequently enacted 1996 Prison Litigation Reform Act.

More than five and one-half years have elapsed since that April 1996 date. But Section 2244(d)(1) and (d)(2), with their much shorter timetable, have long since foreclosed any current effort on Turner's part to obtain Section 2254 relief.

That being the case, "it plainly appears from the face of the petition...that the petitioner is not entitled to relief in the district court" (Section 2254 Rule 4). This Court therefore dismisses the Petition summarily (id.).²



Milton I. Shadur
Senior United States District Judge

Date: December 14, 2001

² This disposition moots Turner's motion for appointment of counsel, which he submitted together with the Petition.